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SEP 08 2005

OFFICE OF PETITIONS

In re Application of	:	
Hagiwara et al	:	DECISION ON APPLICATION
Application No. 09/819,273	:	FOR
Filed: March 28, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 9281-3969	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed September 10, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred fifteen (315) days to three hundred eighty-two (382) days. This request is made, in part, on the basis that the Office has failed to issue a patent within 3-years of the actual filing date of the application.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent

within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

As to the application for patent term adjustment at the time of mailing of the notice of allowance, this request is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is three hundred four (304) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 14, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 315 days. On September 10, 2004, the instant request for reconsideration was timely filed¹. Applicants disclose that the period of adjustment for Office delay in mailing the non-final Office action mailed November 5, 2003 is 96 days, not 102 days. The Office action was mailed in response to their response received April 1, 2003, not March 26, 2003. Furthermore, as the response was received On April 1, 2003, not March 26, 2003, a period of reduction of 5 days should have been entered.

Applicants state that the patent issuing from this application is not subject to a terminal disclaimer.

A review of the application file reveals that applicants are correct in terms of the amount and basis for the correction of both the adjustment from 102 days to 96 days and the reduction from 0 days to 5 days.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is three hundred four (304)

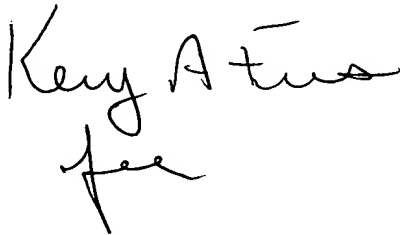
¹ Office records indicate that the Issue Fee was received on September 16, 2004.

days (213 + 96 days of Office delay reduced by 5 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Karin Ferriter". The signature is written in a cursive, flowing style. Below the main name, there is a smaller, more stylized signature that appears to be "Karin".

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of updated PAIR screen